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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive
Framework and to Examine the Integration of
Greenhouse Gas Emissions Standards into
Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

Order Instituting Informational Proceeding –
AB-32

CEC Docket Number 07-OIIP-01

**COMMENTS OF KENNETH C. JOHNSON
PERTAINING TO TYPE AND POINT OF REGULATION ISSUES**

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November 21, 2007

COMMENTS OF KENNETH C. JOHNSON
PERTAINING TO TYPE AND POINT OF REGULATION ISSUES

Kenneth C. Johnson, an unaffiliated individual, U.S. citizen, and resident of California having a personal interest in and concern about climate change, respectfully submits the following comments in response to the *Administrative Law Judge's Ruling Requesting Comments on Type and Point of Regulation Issues* (11/09/2007).

The November 11 ALJ ruling invites parties' comments on the general type and point of regulation to be used to reduce greenhouse gas (GHG) emissions in the electricity sector, and "any other issues they deem to be related to this topic". The following comments are responsive primarily to Q3 (relating to policy evaluation criteria) and Q28-29 (recommended type of regulation), and they focus on policy issues that are independent of the point of regulation.

1. Policy evaluation criteria

The preface to Q3 includes the following proposed evaluation criterion:

Cost minimization: *Is the approach likely to minimize the total cost to end users of achieving a given GHG reduction target?*

This criterion is not responsive to the precise statutory requirements of AB 32 because the question seems to be based on an implicit notion of "target" that is not supported by AB 32, and because "minimum cost" does not necessarily equate to low or acceptable cost and does not imply conformance to any standard of "cost effectiveness".

Although the term "target" does not appear anywhere in AB 32, the meaning and intent of the statute is clear. It defines a "Statewide greenhouse gas emissions limit," which establishes an upper limit on the allowable level of statewide greenhouse gas emissions in 2020 (Sec. 38505(n)). It also requires that the GHG regulations be "technologically feasible and cost-effective," establishing a lower limit below which further emission reductions are not required (Sec. 38560). More specifically, the statute requires that the regulations achieve "the *maximum* technologically feasible and cost-effective greenhouse gas emission reductions" (emphasis added), making it clear that the target level is the lower limit, that determined by feasibility and cost effectiveness, and

not the upper limit. The 2020 emission cap represents a minimal requirement, a necessary but insufficient condition for compliance. It does not represent a de minimis threshold below which further GHG reductions should not apply.

The ALJ ruling appears to tacitly accept and promulgate an interpretation of AB 32 that ascribes no meaning to the Sec. 38560 maximality requirement, in that none of the proposed evaluation criteria or questions in the ruling address this requirement. The relevant question pertaining to Sec. 38560 is not whether the regulations will minimize costs subject to an emission cap constraint; the issue is whether they will minimize emissions subject to feasibility and cost effectiveness constraints. The Commissions' recommendations to ARB will be deficient and incomplete if they are not responsive to the Sec. 38560 requirement and are not informed by stakeholder input on how to address this requirement.

2. Proposal regarding type of regulation

A regulatory structure incorporating the following elements is proposed to implement the statutory requirements of AB 32:

- (1) A cap-and-trade system covering at least the electricity sector.
- (2) 100% auctioning of allowances, with auction revenue being allocated to achieve policy objectives.
- (3) A price floor (reservation price), with retirement of unsold allowances.
- (4) A Governor-authorized safety valve (price cap).
- (5) No banking, but unused allowances can be refunded at the floor price.
- (6) Noncompliance penalty: compulsory, retroactive purchase of allowances, at the safety-valve price, to cover unauthorized emissions.

3. Distribution of auction revenue

A variety of distributional policy objectives and allocation methodologies were discussed in the October 15 ALJ ruling on allowance allocation issues and in respondents' comments. These include grandfathering, distribution proportionate to "economic harm", direct distribution to the public or "in the public interest", and output-based refunding. None of these methods requires administrative allocation of allowances.

Any proportionate allocation formula for allowance distribution can alternatively be applied to auction revenue distribution to achieve equivalent policy objectives.

The above-outlined regulatory framework can work with any of the aforementioned allocation methods. Moreover, the proposed framework has advantages that are independent of the allocation method.

4. The price floor in relation to environmental integrity and contract shuffling

A fundamental advantage of auctioning is that it can accommodate a price floor, which will motivate maximal emission reductions subject to a marginal cost limit defined by the limit price. This would help maintain price stability and avoid the possibility of regulated entities' investments in emission reduction being lost or diluted by price erosion. As noted in the MAC report¹, "A price floor has the attraction of giving investors certainty that the price of emission allowances would never fall below a specified level ... a price floor would reinforce environmental integrity and the value of clean investments." (One other consideration: Even if the emission cap does not survive legal challenges it may still be possible to maintain the price floor as a "monetary incentive" for emission reduction.)

A price floor would also neutralize the effect of contract shuffling. Without a price floor, regulated entities may use contract shuffling in lieu of more costly compliance mechanisms to achieve the emission cap. In effect, the cap would be achieved, in part, by exporting some of California's emissions. But with a price floor, the incentive for further emission reductions would not cease when the cap is achieved. Regulated entities will be motivated to exploit all emission reduction strategies within the marginal cost limit defined by the price floor irrespective whether those strategies include contract shuffling. In effect, the over-compliance motivated by the price floor would neutralize any emission "exports" resulting from contract shuffling.

In the context of a price floor, contract shuffling would perform a useful function of fostering competition for low-GHG energy resources in the California import market. However, this would only be the case if importers' rated GHG emissions are based on

¹ Market Advisory Committee, Final Report, June 29, 2007, p. 68:
http://www.climatechange.ca.gov/policies/market_advisory.html

their actual contracts. If they are based on some larger aggregate, such as the WECC-wide average emission intensity, then competitive incentives for low-GHG imports would be substantially eliminated. One possible interim policy approach would be to allow imported power to be rated, by default, according to WECC-average emission intensity, but also allow out-of-state generators and resellers the alternative option of adopting California-certified GHG accounting standards under which GHG accounting certificates would be sold along with generated power for crediting in the California market. The WECC-average emission rating would be calculated excluding the accounted source emissions, so the competitive incentive to adopt GHG accounting standards would increase as more firms adopt such standards. To maintain regulatory parity between imports and in-state generation, the same voluntary approach could be applied to the latter, but the price floor ensures that competition would soon induce universal adoption of certified GHG accounting protocols for virtually all sources serving the California market.

5. Deficiencies of banking

Banking is, in essence, a form of market speculation. In theory banking can be used to maintain price stability, but due to predictive uncertainty the market may tend to over-invest in banked allowances, causing short-term price increases and market illiquidity followed by long-term price erosion as unneeded allowances are used or sold. Alternatively, the market may under-invest in banking, leaving it vulnerable to price hikes and market manipulation.

Banking is antithetical to climate policy objectives because it motivates entities to acquire more allowances than they need; and banking would interfere with the function of a price floor, which creates a disincentive to acquire unneeded allowances. Under the U.S. SO₂ trading program the industry was able to make extensive use of banking only because the emission cap was nowhere near the threshold of feasibility and cost effectiveness. With an emission cap set at the maximum feasible and cost-effective reduction level, there would be no surplus allowances available for banking. If the cap is set at a higher level, either banking or a price floor could induce short-term emission reductions below the cap level; but with banking the surplus reductions would be

balanced by long-term emission increases in excess of the cap whereas a price floor will maintain long-term incentives for over-compliance.

6. Safety valve

A practical and sensible alternative to banking would be a safety valve, which would release excess allowances only if and when they are needed, and only in the amount needed. Furthermore, a safety valve would not interfere with the price floor incentive for over-compliance in the event that emission prices remain low. In the context of AB 32, a safety valve would be activated by an Executive Order of the Governor under the authority of Sec. 38599(a), which allows the Governor to suspend the regulations under the “threat of significant economic harm”. Although the emission cap may be suspended, maximum feasible and cost-effective emission reductions could still be maintained, via the safety valve, until such time as the cap can be reinstated.

7. Other provisions

Without banking, unused emission allowances cannot be carried over into subsequent compliance periods, but they would be refunded at the floor price. They would not be refunded at the purchase price because a market price in excess of the floor price would be indicative of allowance scarcity, and allowance holders should be induced to trade excess allowances to entities who need them rather than keeping them off the market. This regulatory approach would deter speculation, hoarding, and market manipulation in the emissions market.

The penalty for noncompliance would be compulsory, retroactive purchase of emission allowances, at the safety valve price, to cover the unauthorized emissions. If the sector-wide emission cap is breached as a result of the noncompliance, emissions in excess of the cap should be debited against the succeeding compliance period’s cap and the corresponding penalty fees should be credited to auction revenues for the succeeding period.

Respectfully submitted,

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Dated: November 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of COMMENTS OF KENNETH C. JOHNSON PERTAINING TO TYPE AND POINT OF REGULATION ISSUES on the service list for CPUC Docket No. R.06-04-009 and CEC Docket No. 07-OIIP-01 by serving a copy to each party by electronic mail and/or by mailing a properly addressed copy by first-class mail with postage prepaid.

Executed on November 21, 2007, at Santa Clara, California.

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